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In The
# Supreme Court of the United States

HERMAN ASTER, *Petitioner,*

vs.

ZDENKA ASTER, *Respondent.*

**On Petition For Writ Of Certiorari**
**To The Court Of Appeal**
**For The State Of California Sixth Appellate District.**

## PETITION FOR WRIT OF CERTIORARI

*The Petitioner*
HERMAN ASTER,
2167 Riordan Drive
San Jose, California 95130
Telephone (408) 378-1457

33 pp

## QUESTION PRESENTED FOR REVIEW

Constitutionality of California No-fault Divorce Law, Family Law sections:

2310 Grounds for dissolution or legal separation,
2311 Irreconcilable differences,
2550 Equal division of community estate,

encouraging dissolution of marriage on the ground of fabricated irreconcilable differences to cover up for fraud, inviting suppression of unwelcome evidence and promoting financial destruction of victim.

## PARTIES

The parties are Petitioner Herman Aster representing himself and Respondent Zdenka Aster represented by Dolly Ares, BN 87786,
151 West Saint James Street, San Jose, CA 95110
Phone (408) 297-2245

## TABLE OF CONTENTS


| | |
|---|---|
| Questions presented for review | i |
| Parties | ii |
| Table of contents | ii |
| Authorities | ii |
| Citation of Orders and Opinions | 1 |
| Statement on basis for jurisdiction | 1 |
| Constitutional provisions and statutes | 2 |
| Statement of the Case | 2 |
| Argument of reasons for Writ | 6 |


## AUTHORITIES


| | |
|---|---|
| U.S. Const. | |
| Amend. V. | 2, 8 |
| Amend. XIV. | 2, 8 |
| Cal. Fam. Code | |
| Sect. 2310 | i, 6 |
| Sect. 2311 | i, 6 |
| Sect. 2550 | i, 3, 6 |

## CITATIONS OF ORDERS AND OPINIONS

Superior Court of California, County Santa Clara,
Family Division, department 75.

| | Date: | App: |
|---|---|---|
| Restraining orders | 08/20/99 | |
| Stipulation and order on bank account | 11/18/99 | |
| Motion on nullity denied | 09/20/00 | 1 |
| Judgment termination of marital status | 12/11/00 | |
| Stipulation and order on bank account | 12/11/00 | |
| Judgment of dissolution | 01/09/01 | 1 |
| Motion to suspend judgment denied | 03/12/01 | |

State of California Court of Appeal, 6th Appellate District.

| | | |
|---|---|---|
| Augmentation order granted in part | 06/14/01 | |
| Motion to strike AOB denied | 08/02/01 | |
| Cause ordered submitted | 03/12/02 | |
| Appellate Opinion | 05/08/02 | 8 |
| Petition for rehearing denied | 05/28/02 | 13 |
| Recall of Remittitur denied | 08/22/02 | |

Supreme Court of California.

| | | |
|---|---|---|
| Petition for review denied | 07/17/02 | 14 |

## STATEMENT ON BASIS FOR JURISDICTION

Supreme Court of United States is in jurisdiction:

- State Law violating constitutional provisions at issue.
- All state remedies exhausted.
- Decisions final at state level July 17, 2002.
- Petition served to Attorney General of California.

## THE CONSTITUTIONAL PROVISIONS AND STATUES INVOLVED IN THE CASE

The Constitution of the United States,

Amendment V. "No person shall be ... deprived of ... property without due process of law"

Amendment XIV. "No State shall make or enforce any law which shall ... deprive any person of ... property without due process of law"

## STATEMENT OF THE CASE

Marriage of Herman and Zdenka Aster was entered into fraudulently by wife in Czechoslovakia, at Cold War times part of Soviet Empire.

Communist authorities with full cooperation of wife utilized the marriage as a tool to control husband, valuable asset Electronics Engineer.

Trapped in the marriage by birth of children, even aware of wife's fraud but unable to prove it or seek remedy by divorce, husband continued to care for the family in exemplary manner subsequent 42 years.

After disintegration of Soviet Empire the scope of fraud became provable. Wife, instructed by an attorney, instead of begging for forgiveness, petitioned for dissolution of marriage on the ground of fabricated irreconcilable differences.

In trial court, (App. 1)

following failed attempts to reconcile or settle, husband gathered extensive evidence of wife's fraud in form of archived copies of premarital Contract and notarized testimonies of Soviet Empire era victims. Then

fired attorney Ms. Barbara Brock BN135265 on the ground of conspiration against and refusal to pursue his interests and challenged Petition for Dissolution by Motion for Nullity of Marriage based on wife's fraud. Argument of motion satisfied requirements of all applicable statutes.

At date unknown all evidence submitted with motion disappeared from court's file and, in apparent consequence, uninformed court denied Motion for Nullity with verbal explanation wife's concealment of "The Communist Thing" does not rise to specificity of fraud under California law while, as a benign example, refusal to have sexual relations would.

With knowledge of the court an appeal from ruling on motion for nullity was pending and base for fair division of assets could be established, trial on dissolution followed October 4, 2000.

On the trial
the respondent succeeded in keeping his fully furnished and equipped modest house.

Doctrine of equal division of community estate, interpreted with ferocity exceeding requirements of section 2550 was unsuccessfully challenged by argument of Premarital Contract value, Swiss annuities divided 3:1 in favor of the petitioner and unfair disposition of investment part of respondent's South African IBM retirement benefits.

The Judgment (App. 1) is reflecting dictate of the court. Only after objections, some inappropriate references to stipulation were deleted. (Art. 9, App. 3)

Motion to terminate marital status by dissolution was granted against objections December 11, 2000 with right to remarry effective the same date. The court advised to file second appeal.

Unsuccessful motion to suspend judgment concluded respondent's attempts to resolve the case in Trial Court.

In the Court of Appeal

Appeal from order on nullity and from delayed judgment of dissolution were combined in one Appellant's Opening Brief.

Augmentation order, granted in part, included documents contract and testimonies missing since nullity but denied augmentation of first version of judgment of dissolution.

Submitted AOB re-argued Motion Nullity, plead for reconsideration of Judgment of Dissolution and objected unfairness of trial court's process.

After unsuccessful attempt to strike AOB, the appellee argued in responding brief appellant's consent to marriage was not obtained by fraud and the appellant is not entitled to Judgment of Nullity. Only one of six points on fairness of process was addressed.

Arguments of responding brief were refuted in reply brief.

There were no Oral Arguments.

By appellate opinion, (App. 8)

judgments of the trial court were affirmed on ground of no properly presented arguments.

Appellate opinion ignored all augmented evidence while reciting list of appellee's statements as facts:

- Appellee was never a Communist and parents were till 1951, refuted in testimony Vavrova, Vitovsky and Expert testimony Fuchs.
- Appellant was "well aware" of it when married, refuted in testimony Caha and Vitovsky.

- Appellant "developed the belief that their children were not biologically his" ignored the Appellant shared his belief, as documented in his own testimony and in appellee's letter refusing reconciliation, already after birth of first child 1959. The Appellee not to be bothered until grasping significance of DNA testing some three decades later. (Appellant) ... "going as far as to interfere in immigration proceedings for their daughter". Objections, suppressed in trial court, were based on daughter's own threatening behavior and not on appellant's beliefs.
- Statement, appellant refused to share "his" money, is absurd. All assets held jointly and all Last Wills (App. 18, 20) ever executed naming the appellee as sole beneficiary document appellant's commitment to lifelong caring and sharing. Opposed is idea to divide when there is no more to gain.
- Appellant "blames communists for everything" is the only statement close to truth.

Demonstrated tragedy of marriage betrayed by a communist never respecting marital wows is in view of appellate court no properly presented argument. Respondent's fabrications refuted in motion nullity proceedings and again in appellate briefing prevailed.

The marital Contract, in absence of any other document, might be viewed by the court as a proof there is a marriage to dissolve, no matter all clauses of Canonical Law relevant to its validity were breached by the respondent. Certainly, the clause mandating sharing for life and so material to value of the contract was overlooked by the court as properly presented argument. (Judgment, Article 18, App. 6)

Unfairness in disposition of Swiss annuities and IBM pension benefits, documented in the language of

judgment, (Articles 9,13,19, App. 3-6) failed as properly presented argument.

The petition for rehearing based on omission or misstatement of issue or fact was denied. (App. 13)

Before petition for review reciting grievances in lower courts and addressing broader issue of California Family Law disrespect for institution of marriage and protections it should offer in advanced age could be filed in Supreme Court of California,

the appellee demanded (App. 16) somehow prematurely settlement of $486,634.84 while the value of jointly held portfolio at the date of demand was $453,816. Predatory nature of demand is best documented in sum of $28,700 since date of trial an interest accrued on half value $172,500 of Swiss annuities with death clause benefits contracted solely to the appellee, not yet yielding a penny of dividend. (Art. 3, App. 17)

Denial of the petition for review by the Supreme Court of California July 17, 2002 concluded last attempt to resolve the case in California courts. (App. 14)

Jurisdiction over the case remained uncertain due to Appellate Court denial of motion to recall an instantly issued Remittitur.

## ARGUMENT OF REASONS FOR WRIT

The petitioner begs the court to turn attention to sections 2310, 2311 and 2550 of California Family Law

where all evil is concentrated. Interpretation of Family Law in California Courts is documented in Divorce-in-Santa-Clara-County Guide (App. 15) by Stanford graduate Robin Yeamans:

- Claim of "irreconcilable differences" by one party only is satisfactory ground for divorce,
- Proof of "fault" is not necessary and any evidence is not allowed,
- Property must be divided 50/50,
- The courts want to hear only about bills and property unless circumstances of unusual legal significance.

Such interpretation of divorce law statutes, while reflecting well values of Silicon Valley .com elite and Hollywood establishment and boosting tax revenues on profits of divorce industry are inflicting injustice on righteous of modest means.

Fraud ignored in trial and covered-up in appeal not only deprives the petitioner in advanced age of principal asset of marriage, the family. In reward for life long exemplary care, it condemns to simple choice: lose the house, his only modest home or keep proverbial roof over his head and remain penniless driven into bankruptcy. Perpetrator of fraud, motivated by California Family Law, is encouraged to walk out of marriage with undeserved spoils.

The courts refuse to recognize a fully paid for house is in retirement irreplaceable and indivisible property and a party walking away from it without very good reasons should be the looser. So should be treated all retirement benefits offered in good heart for sharing.

Sections of California Family Law at issue not only document its questionable morality and disrespect for institution of marriage. In demonstrated potential to

deprive a person of property without any evidence of fault allowed, the principle of due process of law is violated. Consequently theirs validity, in sense of limitations imposed by Amendment XIV., is put in question.

Evidence of enslavement and murders directly attributable to marital fraud as argued in briefing and petitions for rehearing and review, suppressed or ignored in California courts and so failing to qualify as of unusual legal significance, as well as irregularities allowed in trial and covered-up in appeal underscore extent of violation of petitioner's rights to fair trial guaranteed under Amendment V.

The Appellant indeed was critical of trial court's ignorance on issues of communism and objected to appellate court's insulting statement .... his "struggle for freedom against totalitarian communist regime" indicate that his grievance is sadly misdirected.
The appellant came to this country from deprivations of communist slavery to the promise of justice to face the courts deliberately suppressing and ignoring all issues related to communism ultimately to be robbed in the name of California No Fault Divorce Law.

San Jose September 23, 2002

Herman Aster
*Petitioner*

| | |
|---|---|
| Trial Court: | Superior Court of California<br>Santa Clara County, Dpt. 75 |
| Case : | 1-99-FL086124 |
| Trial Judge: | Honorable Jamie Jacobs-May |

## MOTION ON NULLITY DENIED

Filled: September 20, 2000
FINDINGS AND ORDER AFTER HEARING

1. Respondent's motion for a nullity of marriage is denied.

## JUDGMENT OF DISSOLUTION

Filled: January 9, 2001

Marriage of Aster, Case No. 1-99-FL086124

1. Both parties waive their right to receive spousal support, and the Court's jurisdiction to award support to either party is hereby terminated.

2. Each party shall pay his or her own attorney fees and costs through date of trial.

3. Respondent shall reimburse Petitioner for one-half of sum of $475.00, representing the appraisal fee of Gene Hubbard.

4. The IRA/AARP account in Respondent's name in the approximate amount of $62,515 is awarded to Respondent as his sole and separate property.

5. The IRA/AARP account in Petitioner's name in the approximate amount of $62,521 is awarded to Petitioner as her sole and separate property.

6. Elizabeth Strassen shall be retained by the parties to prepare Qualified Domestic Relation Orders (QDROs) on the following accounts and each party shall pay one-half of the cost thereof:

a. 401K account with Franklin in Respondent's name in the approximate amount of $134,877.
b. 401K account with UBS in Respondent's name in approximate amount of $92,604.
c. 401K account with Putnam in Petitioner's name. The amount at the date of separation with accrued interest shall be divided and Petitioner shall be awarded her separate property interest representing any contributions plus interest made since date of separation to the date of division.

7. The real property located at 2167 Riordan Drive, San Jose, California shall be awarded to Respondent as his sole and separate property. Respondent shall pay to Petitioner one-half of the sum of $467,000, which is the agreed upon value of the property.

8. Rental Value: Respondent shall pay to Petitioner the sum of $11,450, representing one-half of the rental value of real property since date of separation to the date of trial.

9. The Respondent presented evidence regarding two annuities consisting of Zurich Life Insurance Company policy nos. 7,262.019 and 7,299.583. Respondent presented evidence to support his position that the value of the annuities was significant and almost equal to the value of the death benefit. After testimony, the Court made the following tentative ruling: The annuities are community property. The Court disagrees with the evidence presented by the Respondent and makes the following tentative ruling: The annuities shall be cashed in or the parties shall share the annuity benefits on an ongoing basis. If the Petitioner dies, the Respondent is entitled to full amount of the benefits. If the respondent dies , the Petitioner is entitled to full amount of the benefits. After the tentative ruling, the Respondent indicated to the Court that he wished to keep both annuities and that he would pay Petitioner her interest in the annuities. ~~The parties then entered into the following stipulation on record:~~ H.A. Respondent is awarded any and all benefits from said annuities during his lifetime. Said annuities are in Respondent's name and Respondent shall not change any of the terms of said policies including, but not limited to, the death benefit portion of the policies. Respondent shall pay to Petitioner as and for her interest in said policies the sum of $172,500.

10. **Bank accounts:**

a. The Wells Fargo checking account No. 0572-202397 in approximate amount of $18.887, as well as First Albany

Bank account No. 1237-0141 in approximate amount of $30,771 shall be divided equally between the parties.

b. The Downey Bank account no. 3996013300 and Citibank account no. 40008550531 have been previously divided between the parties.
c. The Valley Credit Union account no. 0000026968 in the amount of $628.25 shall be equally divided between the parties.

11. **Security Accounts:** The following security accounts shall be divided in kind between the parties:

a. BP/PB account, consisting of 3,000 shares, approximate value: $43,687.
b. Bristol Myers account Consisting of 1600 shares, approximate value of $85,800
c. IBM account no. 88550 and 90115 consisting of 1,608 shares, approximate value $201,402.
d. Exxon Mobil account consisting of 400 shares, approximate value $35,850.
e. Phillip Morris account consisting of 1,800 shares, approximate value $48,037.
f. Paine Webber account, consisting of 3200 shares of HB and 3200 shares of PSCO, with an approximate value of $145,453.

12. **Swiss accounts:** Petitioner presented evidence regarding Swiss accounts consisting of investment accounts PO280671.0, PO280671.1, as well as an investment account. Petitioner alleged that on June 25, approximately one month prior separation, the investment account contained net asset of 136631 Swiss francs. Approximately one month after separation, the investment account was

depleated. Respondent alleged that said funds had been used to purchase the second annuity or that he had no knowledge of what happened to the funds. The Court found that Petitioner had the burden of proving misappropriation of the funds by the Respondent and that Petitioner failed to carry her burden of proof. The Court did not preclude any remedies **under Family Code Section 2120 et seq.** which might be available to Petitioner subject to the statute of limitations therein.

13. The IBM pension is awarded to Respondent as his sole and separate property.

14. The parties agree that there was a South Africa checking account No. 001513753 and Escom bond R200,000. The parties entered into a Stipulation as follows: Respondent set value of said account in the amount of $5,000. Petitioner agreed to pay to Respondent the sum of $5,000, representing any and all interest that Respondent may have in the South Africa investment account. The South African account of R200,000 shall be awarded to Petitioner as her sole and separate property. Respondent shall do everything necessary to transfer said account to Petitioner's name.

15. The parties had an investment consisting of 100 gold Kruggerands. Respondent shall deliver to Petitioner one-half of said Kruggerands.

16. Petitioner is awarded the 1993 Honda Civic at the agreed upon value of $4,000; Respondent is awarded the 1987 Honda Civic at agreed upon value of $500.00.

17. **House hold Furniture & Furnishings:** Respondent agreed to return to Petitioner the following: Main bedroom: one picture by the door and one alarm clock; Zdenka's room: Sewing machine and pictures which were wife's separate property; Sunroom: one-half of ornamental plates; Living room: One floor lamp, one wall clock from Africa, two pictures above couch, three ornamental plates, one-half of African and Czech ornaments, books and dictionaries, one-half of the audio and video tapes; Dining room: one picture above cabinet, four pieces of crystal; Kitchen: one clock radio, in house grille.
The parties have divided the family photo albums and Respondent has returned to Petitioner the family tree book. Respondent shall pay to Petitioner the sum of $1,000 as an agreed upon amount. All other household furniture and furnishing are awarded to Respondent as his sole and separate property.

18. **Premarital Contract:** Respondent presented evidence to the Court regarding an alleged premarital contract which he alleged was breached by the Petitioner and that he was therefore entitled to damages. Petitioner alleged that there was no premarital contract and that the alleged contract was in fact an agreement with the Catholic Church. After evidence was submitted, the Court ruled that the Respondent had no right to money damages for breach of the marriage contract.

19. **IBM stock:** Respondent alleged that IBM stock accounts 88550 and 90115 were his separate property. After evidence was presented, the Court ruled that said accounts were quasi-community property and were to be divided equally.

20. The equalizing payment payable by Respondent to Petitioner is payable forthwith and earns interest at the legal rate 10% as of date of trial, October 4, 2000.

DATED: _____ _____

JUDGE OF THE SUPERIOR COURT

APPROVED AS TO SUBSTANCE AND FORM:

"s/ Herman Aster"

_____

Herman Aster, Respondent in Propria Persona

ACKNOWLEDGMENT /hand written/

Mr. Aster acknowledged
that this is his signature
in open court.
12/11/00 "s/ Justice May"

App. 8

**APPELLATE OPINION**

NOT TO BE PUBLISHED FILED
May 8 2002

IN THE COURT OF APPEAL OT THE STATE OF CALIFORNIA SIXTH APPELLATE DISTRICT

| | |
|---|---|
| In re Marriage of ZDENKA and HERMAN ASTER | H022230 (Santa Clara County Super. Ct. No. FL086124) |
| ZDENKA ASTER Respondent, v. HERMAN ASTER, Appellant. | |

In this Appeal following the dissolution of his marriage to respondent Zdenka Aster, appellant Herman Aster challenges the superior court's denial of his motion to declare his marriage a nullity. He further contests the court's division of property.

*Background*

In August 2000, in the course of dissolution proceedings initiated by respondent, appellant moved for annulment of the marriage based on fraud. Appellant alleged that he and respondent were bound by a contract they had signed in Czechoslovakia preceding their 1956 marriage in the Roman Catholic Church. The contract, he claimed, bound them never to divorce, and could not be terminated except by death or mutual consent. His bride, however, had

concealed the fact that she and her parents "subscribe[d] to criminal Communist doctrine contradicting the Church." That association made her "ineligible" to marry him. Had he known the facts, he never would have married her and subject himself to "13 years of deprived life in Communist slavery," marital "betrayal," and children who did not "respect Christian values." At the hearing on the motion appellant added that respondent had "failed to baptize the children," who were then 35 and 40 years old. Appellant believed it was unfair that he should "suffer just because she wants no more to fulfill that contract."

In her opposing declaration respondent stated that she was never a Communist. Her parents had been Communists for a few years until 1951, a fact of which appellant was "well aware" when they married, but neither she nor her parents had anything to do with the Communists at the time of the marriage. According to respondent, appellant "blames the Communists for everything." He did not trust anyone, and he had developed belief that their children were not biologically his, even going so far as to interfere in immigration proceedings for their daughter. Appellant had told her he would not share "his" money with her if she divorced him. It was respondent's belief that her husband was seeking annulment only to avoid having share the community property they had acquired in the course of his long marriage.

The family court denied Appellant's motion, explaining that nullifying a marriage for fraud involved "a very specific kind of fraud." The misrepresentation or concealment that would avoid an ordinary contract would not be enough; it "must have been vital to the relationship directly [a]ffecting the purpose of deceived party in

consenting to the marriage." The court gave appellant examples of misrepresentations that would and would not constitute fraud for purposes of nullification. Promising not to get divorced was not enough, the court noted, nor was holding a "belief system" like Communism.

The court entered a judgment of dissolution regarding status on December 11, 2000. On January 9, 2001, the court entered judgment as to reserved issues of property division. Appellant filed a notice of appeal from the order denying his motion for annulment and from judgment dividing the property.

*Discussion*

Representing himself on appeal, appellant contends the court erred in finding that respondent's fraud was insufficient to warrant annulment of the marriage. In his view, the court "displayed abysmal ignorance of innumerable communist crimes in general, appellant's suffering on hands of the [respondent] and her communist affiliates in particular and significance of actions of oppressed church." Had the court had any experience with Communism, it would have recognized that respondent's fraud "went to very essence of marital relationship."

Appellant has failed to demonstrate error. He cites no authority for proposition that respondent's alleged Communist affiliation (which she maintained was nonexistent) should be deemed vital to marriage relationship. Beyond the attack on the court's "ignorance" and its perceived lack of sympathy for his suffering, appellant offers no contrary showing. Instead, he merely continues to assert that the "[f]ailure to produce [a] family respecting Christian values and condemnation to deprived life in Communist slavery" go to essence of marriage. Indeed appellant's repeated references to his "struggle for

freedom against totalitarian Communist regime" indicate that his grievance is sadly misdirected.

Appellant also seeks review of the termination of the parties' marital status. He did not appeal from that order, which is final, nor does he present any issues specific to a challenge to the dissolution. In his reply brief, appellant asks this court to address the judgment of dissolution as to status. It is not within our power to "treat the matter as waived by [respondent]." Because appellant did not appeal from that judgment, we are without jurisdiction to review it. (Cf. In re Marriage of King (2000) 80 Cal.App.4th 92, 109-110; Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc. (1997) 15 Cal.4th 51,56.)

We can consider Appellant's arguments related to the court's division of property, which are based on judgment from which he did file a notice of appeal. However appellant presents no cognizable appellate issues, but only appears to be requesting a new division of property, a role that is not this court's to undertake.

Finally, appellant contends that the hearing "process' was unfair to him. With no accompanying argument or citation of authority, he lists the following grievances: the court's failure to continue (on his own motion) the "trial date" while he appealed the denial of nullification; delay in filing the clerk's transcript after his notice of appeal; termination of marital status over his objections; denial of access to the court file ; entry of judgment without valid signature; and bias against him while "siding with [respondent's] parasitic and predatory positions"

"When an appellant decides to represent himself in propria persona, 'he is entitled to the same, but not greater, consideration than other litigants and attorneys. [Citations.]' "(Bistawros v. Greenberg (1987) 189 Cal.

App.3d 189, 193 quoting Nelson v. Gaunt (1981) 125 Cal.App.3d 623, 638.) This court is not required to search the record to determine whether a judgment should be reversed. (Guthrey v. State of California (1998) 63 Cal.App.4th 1108, 1115; Mansell v. Board of Administration (1994) 30 Cal.App.4th 539, 545.) In brief contains mere assertion of error without development of an argument or citation of authority, this court may treat the issue as waived. (Mansell v. Board of Administration, supra, 30 Cal.App.4th at pp. 545-546; Dills v. Redwoods associates, Ltd. (1994) 28 Cal.App.4th 888, 890, fn. 1.) This is such a case. Having made no showing of error, appellant is not entitled to reversal.

*Disposition*

The judgments are affirmed.

_____

Elia, J.

WE CONCUR:

_____

Premo, Acting P.J.

_____

Wunderlich, J.

In re Marriage of Aster
H022230

## PETITION FOR REHEARING DENIED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SIXTH APPELLATE DISTRICT

FILED
May 28, 2002

In re the Marriage of ZDENKA AND HERMAN ASTER.
ZDENKA ASTER,
Respondent,
v,
HERMAN ASTER,
Appellant.

H022230
Santa Clara County No. FL086124

BY THE COURT:*

Appellant's petition for rehearing is denied.

Date: May 28 2002 PREMO, J. Acting P.J.

* (Before Premo, Acting P.J., Elia, J. and Wunderlich, J.)

**PETITION FOR REVIEW DENIED**

Court of appeal, Sixth Appellate District - N0. H022230
**S107532**

**FILED**
**JUL 17 2002**

# IN THE SUPREME COURT OF CALIFORNIA
**En Banc**

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In re Marriage of ZDENKA AND HERMAN ASTER.

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ZDENKA ASTER, Respondent,

v.

HERMAN ASTER, Appellant.

==========

Petition for review DENIED.
Brown, J., was absent and did not participate.

GEORGE

_____

Chief Justice

EXCERPT from Divorce-in-Santa-Clara-County guide by Stanford graduate Robin Yeamans, Edition 2000, Chapter 9, page 79, San Jose Library of Law.

## IX. Law – Know Your Rights

Icon: Column of books; woman walking away (from marriage?)

### A. Dissolution, nullity, legal separation

No-fault divorce

Before 1970, it was necessary to prove "fault" in order to obtain a divorce; the "innocent spouse had to prove that the other one had done something such as adultery or cruelty or abandonment. In 1970, the law was completely changed to introduce no-fault divorce in California. The new grounds for divorce were simply "irreconcilable differences." If one spouse proves that the parties have differences that cannot be reconciled, but the first one still wants a divorce, the divorce will be granted and cannot be prevented.

Effect of no-fault divorce law

The introduction of no-fault divorce brought with it two major changes. First, evidence of fault is not allowed unless it is relevant to some other issue such as child custody. The courts simply want to hear about bills and property and other similar issues, and they don't care what happened during the marriage unless it has some unusual legal significance. Second, under the old law the "innocent" spouse could receive more than half the property. Under the new law the property must be divided 50/50.

App. 16

## LETTER OF DEMANDS

**Dolly Ares**
**Attorney at Law**

Fax (408) 286-4142

151 West Saint James Street
San Jose, California 95110
(408) 297-2245

June 3, 2002

Herman Aster
2167 Riordan Drive
San Jose, CA 95130

RE: Marriage of Aster

Dear Mr. Aster:

You have now exhausted your appeal rights in this matter. It is now time to comply with the Judgment filed January 9, 2001.

I would like you to provide me with statements from the following accounts for the period January 2000 to date:

a. 401K with Franklin
b. 401K with UBS

We need this documents in order to have Elizabeth Strasen divide the accounts. I am obtaining the same information from Zdenka for her 401K with Putnam.
All of these accounts will be divided by a Qualified Domestic Relation Order (QDRO).

1. **House:** One-half of $467,000, or $233,500, plus interest at 10% from October 2, 2000 to date in the amount of $37,596.64, for total of $271,096.64.

2. **Rental Income:** $11,450, plus 1% interest from October 4, 2000 in amount of $1,908.20, for a total of $13,358.20.

3. You owe Zdenka $172,500 plus interest at 10% FROM October 4, 2000 to date in the amount of $28,700, for a total of $201.000.00.

4. Please provide statements for Wells Fargo checking account #0572-20239 and First Albany Bank account #1237-0141 from June 1, 2000 to date. They need to be divided one-half to each.

5. All security accounts listed in Paragraph 11 of the Judgment need to be divided immediately.

6. Pursuant to Paragraph 11, you owe Zdenka $1,000 plus interest at 10% in the amount of $180, for a total of $1,180.00.

7. IBM stock account needs to be divided immediately. You need to provide a copy of all statements from June 1, 2000 to date.

**RECAP:**

Pursuant to the above, you owe Zdenka cash in the total amount of $486,634.84 computed as follows:

a) $271,096.64
b) 13,358.20
c) 201,000.00

d) 1,180.00
$486,634.84

How do you intend to make payment? We must divide the property and payment must be made as quickly as possible.

Yours very truly,

"s/ Dolly Ares"
DOLLY ARES
DA/cl
cc: Zdenka Aster

# Last Will and Testament
# of
HERMAN ASTER

THE STANDARD BANK OF SOUTH AFRICA LIMITED
(Registered Commercial Bank)

WILL.

I, the undersigned, HERMAN ASTER, married in community property to ZDENKA ASTER (born MIKULASEK), do hereby revoke all Wills, Codicils and other Testamentary Acts heretofore made by me and declare the following to be my Last Will and Testament.

1. I appoint THE STANDARD BANK OF SOUTH AFRICA LIMITED to be the Executor of this Will and I direct that the said Bank Shall not be called upon to furnish security for acting in that capacity. I further direct that the Bank and any Company or Institution in which it has an interest, financial or otherwise, may, without being liable

to account for any profit thereby made, act as Banker and provide any banking or other services and perform any work on behalf of my estate on the same terms and conditions as would be made with a customer in the ordinary course of business.

2. I bequeath the residue of my estate to my husband/wife provided he/she survives me for a period of thirty days.

3. Should my husband/wife not survive me for a period of thirty days I appoint my children to be the sole heirs of the residue of my estate. Should any of my children predecease me, his or her share of my estate shall devolve upon his or her lawful issue by representation and failing such issue his or her share shall accrue to my remaining children or their lawful issue per stirpes.

4. Any female taking under this my Will shall take for her own sole and absolute use and benefit and free from all debts, control and marital power of and excluded from any community property with any husband she may have married or marry and her receipt alone shall be a sufficient discharge for any payments made to her.

SIGNED at Cape Town this 20th day of January, 1976 in presence of the undersigned witnesses all being present at the same time.

AS WITNESSES:

1. "s/ not legible"
2. "s/ not legible"

"s/ Aster"
TESTATOR/TESTATRIX

# CALIFORNIA STATUTORY WILL OF

Herman ASTER

_____

(Insert Your Name)

## Article 1. Declaration

This is my will and I revoke any prior wills and codicils.

## Article 2. Disposition of My Property

2.1. PERSONAL AND HOUSEHOLD ITEMS. I give all my furniture, furnishing, household items, personal automobiles and personal items to my spouse, if living; otherwise they shall be divided equally among my children who survive me.

2.2. CASH GIFT TO PERSON OR CHARITY.
(Not used)

2.3. ALL OTHER ASSETS (MY "RESIDUAL ESTATE"). I adopt only one Property Disposition Clause I wish to adopt. I sign in only one box. I write the words "not used" in the remaining boxes. If I sign in more than one box or in any box, the property will be distributed as if I did not make a will.
PROPERTY DISPOSITION CLAUSES (Select one.)

(a) TO MY SPOUSE IF LIVING; IF NOT LIVING, THEN TO MY CHILDREN AND DESCENDANTS OF ANY DECEASED CHILD ..... "s/ Herman Aster"

(b) TO MY CHILDREN AND DESCENDANTS OF ANY DECEASED CHILD. I LEAVE NOTHING TO MY SPOUSE, IF LIVING ..... NOT USED

(c) TO BE DISTRIBUTED AS IF I DID NOT HAVE A WILL ..... NOT USED

**Article 3. Nomination of Executor and Guardian**

3.1 EXECUTOR (Name at least one.)
I nominate the person or institution named in the first box of this paragraph 3.1 to serve as executor of this will. If that person or institution does not serve , then I nominate the others to serve in the order I list them in the other boxes.

FIRST EXECUTOR ..... Zdenka ASTER
SECOND EXECUTOR ..... Radek ASTER
THIRD EXECUTOR ..... Jana ASTER

3.2. GUARDIAN (not used-no children under 18 of age)

3.3. BOND
My signature in this box means that a bond is not required for any individual named in this will as executor or guardian. If I do not sign in this box, then a bond is required for each of those persons as set forth in the Probate Code. (The bond provides a fund to pay those who do not share of your estate to which they are entitled, including your creditors, because of improper performance of duties by the executor or guardian. Bond premiums are paid out of your estate.) ..... "s/ Herman Aster"

I sign my name to this California Statutory Will
on October 5th 1988 at San Jose California
"s/ Herman Aster"

STATEMENT OF WITNESSES (you must use two adult witnesses and three would be preferable)
Each of us declares under penalty of perjury under the laws of California that the testator signed this California statutory will in the presence of each other, sign below as witnesses, declaring that the testator appears to be sound mind and under no duress, fraud, or under influence.

"s/ John Ryder"
375 Ave. Alhambra El Granada, CA 94018
"s/ John Calder"
6576 Lafern Court San Jose, CA 95120
"s/ Dennis Pinion"
675 Encino Drive Morgan Hill, CA 95035

**END OF CALIFORNIA STATUTORY WILL FORM**